House Bill 858

By: Representatives Geisinger of the 48th, Lindsey of the 54th, Setzler of the 35th, Coan of the 101st, Powell of the 29th, and others

A BILL TO BE ENTITLED

AN ACT

1   To amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to

2   elections and primaries generally, so as to provide for the duplicating of certain damaged

3   optical scan ballots; to provide for certain recounts; to provide for additional grounds for

4   challenging an election; to provide for a random hand count of optical scan ballots at the

5   precinct; to provide procedures for such count; to provide for related matters; to provide an

6   effective date; to repeal conflicting laws; and for other purposes.

7   BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8   **SECTION 1.**

9   Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and

10   primaries generally, is amended by revising Code Section 21-2-483, relating to counting of

11   optical scan ballots, as follows:

12   "21-2-483.

13   (a) In primaries and elections in which optical scanners are used, the ballots shall be

14   counted at the precinct or tabulating center under the direction of the superintendent. All

15   persons who perform any duties at the tabulating center shall be deputized by the

16   superintendent, and only persons so deputized shall touch any ballot, container, paper, or

17   machine utilized in the conduct of the count or be permitted to be inside the area designated

18   for officers deputized to conduct the count.

19   (b) All proceedings at the tabulating center and precincts shall be open to the view of the

20   public, but no person except one employed and designated for the purpose by the

21   superintendent or the superintendent´s authorized deputy shall touch any ballot or ballot

22   container.

23   (c) At the tabulating center, the seal on each container of ballots shall be inspected, and

24   it shall be certified that the seal has not been broken before the container is opened. The

25   ballots and other contents of the container shall then be removed, and the ballots shall be

1   prepared for processing by the tabulating machines. The ballots of each polling place shall

2   be plainly identified and cannot be commingled with the ballots of other polling places.

3   (d)   Upon completion of tabulation of the votes, the superintendent shall cause to be

4   completed and signed a ballot recap form, in sufficient counterparts, showing:

5   (1) The number of valid ballots, including any that are damaged;

6   (2) The number of spoiled and invalid ballots; and

7   (3) The number of unused ballots.

8   The superintendent shall cause to be placed one copy of the recap form and the defective,

9   spoiled, and invalid ballots, each enclosed in an envelope, in the ballot supply container.

10   (e)   For any election for which there is a qualified write-in candidate, the feature on

11   precinct count and central count tabulators allowing separation of write-in votes shall be

12   utilized. If any vote cast on the write-in ballot in combination with the vote cast for the

13   same office on the ballot exceeds the allowed number for the office, the vote cast for that

14   office only shall not be counted. In the discretion of the superintendent, either a duplicate

15   ballot shall be made on which any invalid vote shall be omitted or the write-in ballot and

16   the ballot shall be counted in such manner as may be prescribed by State Election Board

17   rules, omitting the invalid vote.

18   (f)   If it appears that a ballot is so torn, bent, or otherwise defective that it cannot be

19   processed by the tabulating machine, the superintendent or the poll manager, as

20   appropriate, in his or her discretion, may order the proper election official at the tabulating

21   center or precinct to prepare a true duplicate copy for processing with the ballots of the

22   same polling place, which shall be verified in the presence of a witness. The damaged

23   ballot shall be given a unique serial number which shall be written on the ballot. All

24   duplicate ballots shall be clearly labeled by the word 'duplicate,' shall bear the designation

25   of the polling place, and shall be given the same serial number as the defective ballot. The

26   defective ballot shall be retained.

27   (g)(1) The precinct tabulator shall be programmed to return to the voter at the time that

28   the voter inserts the ballot any ballot on which an overvote is indicated, along with any

29   ballot that cannot be processed by the tabulator for reevaluation or correction or spoiling

30   of the ballot, and a new ballot shall be issued if the voter desires to vote another ballot in

31   order to correct mistakes, overvotes, or other problems.

32   (2)(A) The central tabulator shall be programmed to reject any ballot, including

33   absentee ballots, on which an overvote is detected and any ballot so rejected shall be

34   manually reviewed by the vote review panel described in this Code section to determine

35   the voter's intent as described in subsection (c) of Code Section 21-2-438.

36   (B) In a partisan election, the vote review panel shall be composed of the election

37   superintendent or designee thereof and one person appointed by the county executive

1   committee of each political party and body having candidates whose names appear on

2   the ballot for such election, provided that, if there is no organized county executive

3   committee for a political party or body, the person shall be appointed by the state

4   executive committee of the political party or body. In a nonpartisan election, the panel

5   shall be composed of the election superintendent or designee thereof and two electors

6   of the county, in the case of a county election, or the municipality, in the case of a

7   municipal election, appointed by the chief judge of the superior court of the county in

8   which the election is held or, in the case of a municipality which is located in more than

9   one county, of the county in which the city hall of the municipality is located. The

10   panel shall manually review all ballots rejected by the tabulator under subparagraph (A)

11   of this paragraph and shall determine by majority vote whether the elector's intent can

12   be determined as described in subsection (c) of Code Section 21-2-438 and, if so, said

13   vote shall be counted as the elector intended. In the event of a tie vote by the vote

14   review panel, the vote of the election superintendent or designee thereof shall control.

15   (h) The official returns of the votes cast on ballots at each polling place shall be printed

16   by the tabulating machine. The returns thus prepared shall be certified and promptly

17   posted. The ballots, spoiled, defective, and invalid ballots, and returns shall be filed and

18   retained as provided by law.

19   (i)(1)(A)   In primaries and elections in which precinct based optical scan tabulating

20   equipment is used, a random sample of the optical scan ballots shall be counted at each

21   precinct under the direction of the poll manager.

22   (B)   After processing all optical scan ballots and printing the results tapes from the

23   tabulating machines, the poll manager shall randomly select one contested race from

24   the ballot for a hand count. Such selection shall be made by listing all of the contested

25   races on the ballot individually on uniform sized slips of paper, uniformly folding such

26   slips of paper such that the name of the race cannot be seen, placing the slips of paper

27   into a container and mixing the slips thoroughly, and then drawing from the container

28   one slip of paper. Upon drawing the slip of paper, the manager shall then announce the

29   race that will be hand counted. The slips of paper shall be available for examination

30   by any member of the public who desires to do so.

31   (C) After randomly selecting the race for a hand count, the manager or a poll officer

32   under the direction of the manager shall unlock the ballot boxes containing the optical

33   scan ballots. The poll manager shall then proceed to count the votes cast in the

34   randomly selected race as shown on the ballots. Such count shall be performed in the

35   same manner as for paper ballots as provided in Code Section 21-2-437 for the

36   randomly selected race. Upon the conclusion of the count, the manager or a poll officer

37   under the direction of the manager shall record the results of the hand count on the

1   return sheet and shall compare the results for the race to the results shown on the tapes

2   from the tabulating machine for such race. In the event of a discrepancy in the count

3   between the totals for such race, the manager or a poll officer under the direction of the

4   manager shall post the results of the hand count and one set of return tapes from the

5   tabulating machine, noting any discrepancies found, at the polling place for the

6   information of the public.

7   (D) After performing the hand count of the race or races, the manager shall cause the

8   optical scan ballots to be securely sealed in the ballot box and shall seal the return

9   sheets, tally sheets, one set of return tapes, and other completed forms in an envelope

10   for transfer to the election superintendent.

11   (2)(A) In primaries and elections in which central count optical scan tabulating

12   equipment is used, a random sample of the optical scan ballots shall be counted at the

13   tabulating center at each precinct under the direction of the superintendent.

14   (B) After processing all optical scan ballots and printing the results reports from the

15   tabulating machines, the superintendent shall randomly select one contested race from

16   the ballot for a hand count. Such selection shall be made by listing all of the contested

17   races on the ballot individually on uniform sized slips of paper, uniformly folding such

18   slips of paper such that the name of the race cannot be seen, placing the slips of paper

19   into a container and mixing the slips thoroughly, and then drawing from the container

20   one slip of paper. Upon drawing the slip of paper, the superintendent shall then

21   announce the race that will be hand counted. The superintendent shall then randomly

22   select a number of precincts constituting at least 10 percent of the precincts in the

23   county for the hand count. Such selection shall be made by listing all of the precincts

24   individually on uniform sized slips of paper, uniformly folding such slips of paper such

25   that the name of the precinct cannot be seen, placing the slips of paper into a container

26   and mixing the slips thoroughly, and then drawing from the container one slip of paper

27   at a time until the appropriate number of precincts has been selected. Upon drawing the

28   slip of paper, the superintendent shall then announce the race that will be hand counted

29   The slips of paper shall be available for examination by any member of the public who

30   desires to do so.

31   (C) After randomly selecting the race for a hand count, the superintendent shall cause

32   the selected race on each ballot cast in the selected precincts to be hand counted as

33   provided in this paragraph. Such count shall be performed in the same manner as for

34   paper ballots as provided in Code Section 21-2-437 for the randomly selected race.

35   Upon the conclusion of the count, the superintendent shall record the results of the hand

36   count on the return sheet and shall compare the results for the race to the results shown

37   on the reports from the tabulating machine for such race. In the event of a discrepancy

1   in the count between the totals for such race, the superintendent shall post the results

2   of the hand count and one set of return tapes from the tabulating machine, noting any

3   discrepancies found, at the tabulating center or the office of the superintendent for the

4   information of the public.

5   (j) In the event of a discrepancy between the hand count totals from the precincts and the

6   totals from the tabulating machines, the superintendent shall use the hand count totals as

7   the official results. The superintendent shall immediately make the public aware of any

8   such discrepancy by posting notice of such discrepancy at his or her office for the

9   information of the public and on the official website of the county or municipality on which

10   the county or municipality posts election returns if the county or municipality has such a

11   website. The superintendent shall note on the official returns for the primary, election, or

12   runoff, as appropriate, the vote totals that are based, in whole or in part, on hand counts as

13   a result of a discrepancy between the hand count and the machine totals."

14   **SECTION 2.**

15   Said chapter is further amended by adding new subsections (e) and (f) to Code Section

16   21-2-495, relating to procedure for recount or recanvass of votes, to read as follows:

17   "(e) Any other provision of this Code section to the contrary notwithstanding, a candidate

18   may petition the Secretary of State, in the case of a candidate in a race which is voted upon

19   by electors in more than one county, or the election superintendent, in the case of races

20   voted upon by electors in one county or a portion of one county, for a hand recount of the

21   optical scan ballots in a county when it appears that there is a discrepancy in a precinct in

22   such county between the hand count of a randomly selected race pursuant to subsection (i)

23   of Code Section 21-2-483 and the results for the same race as shown on reports from the

24   tabulating machines. Upon receiving a proper petition, the Secretary of State or the

25   election superintendent, as appropriate, shall order a hand count to be conducted of all of

26   the optical scan ballots for such race in such county. Such hand count shall be held at any

27   time prior to the certification of the consolidated returns by the Secretary of State. The

28   hand count shall be conducted by the appropriate superintendent or superintendents in the

29   manner and pursuant to the procedures otherwise provided in this Code section for

30   counting paper ballots. The petition pursuant to this Code section shall be in writing and

31   signed by the person or persons requesting the hand count. The petition shall set forth the

32   discrepancies and any evidence in support of the petitioner's request for a hand count and

33   shall be verified. The result of such hand count shall then become the official result of

34   such primary, election, or runoff. The cost of such recounts shall not be charged to any

35   candidate, political party or body, or elector.

1   (f) Any other provision of this Code section to the contrary notwithstanding, a candidate

2   or ten or more electors who cast ballots in the race in which the candidate ran may petition

3   the Secretary of State, in the case of a candidate in a race that is voted upon by electors in

4   more than one county, or the election superintendent, in the case of a candidate in a race

5   that is voted upon by the electors of one county or a portion of one county, for a hand

6   recount of the optical scan ballots in all precincts when it appears that there are similar

7   discrepancies in more than one precinct between the hand count of a randomly selected

8   race pursuant to subsection (i) of Code Section 21-2-483 and the results for the same race

9   as shown on the reports from the tabulating machines. Upon receiving a proper petition,

10   the Secretary of State or the election superintendent, as appropriate, shall order a hand

11   count to be conducted of all of the optical scan ballots for such race in all precincts. Such

12   hand count shall be held at any time prior to the certification of the consolidated returns by

13   the Secretary of State or the election superintendent, as appropriate. The hand count shall

14   be conducted by the appropriate superintendent or superintendents in the manner and

15   pursuant to the procedures otherwise provided in this Code section for counting paper

16   ballots. The petition pursuant to this Code section shall be in writing and signed by the

17   person or persons requesting the hand count. The petition shall set forth the discrepancies

18   and any evidence in support of the petitioner's request for a hand count and shall be

19   verified. The result of such hand count shall then become the official result of such

20   primary, election, or runoff."

21   **SECTION 3.**

22   Said chapter is further amended by revising Code Section 21-2-522, relating to grounds for

23   contesting an election, as follows:

24   "21-2-522.

25   A result of a primary or election may be contested on one or more of the following

26   grounds:

27   (1) Misconduct, fraud, or irregularity by any primary or election official or officials

28   sufficient to change or place in doubt the result;

29   (2) When the defendant is ineligible for the nomination or office in dispute;

30   (3) When illegal votes have been received or legal votes rejected at the polls sufficient

31   to change or place in doubt the result;

32   (4) For any error in counting the votes or declaring the result of the primary or election,

33   if such error would change the result;

34   (5) When there is an unexplained discrepancy between the results of a hand count of a

35   race pursuant to subsection (i) of Code Section 21-2-483 and the results of such race as

36   shown by the tabulating machine tapes or reports in a precinct in which the person filing

1   the contest was a candidate and such discrepancy places the results of such race in doubt;

2   or

3   ~~(5)~~(6) For any other cause which shows that another was the person legally nominated,

4   elected, or eligible to compete in a run-off primary or election."

SECTION 4.

6   This Act shall become effective on January 1, 2008.

SECTION 5.

8   All laws and parts of laws in conflict with this Act are repealed.